Lauer, 13 Idaho 163, 88 Pac. 1057. When a definite amount for attorney's fees is specified in a note, the question whether the holder is entitled to recover the entire amount named is one on which the authorities do not agree. In *McIntire* v. *Cagley,* 37 Iowa. 676, it is held that a stipulation to pay an attorney's fee of 10 per cent. on the amount collected imports liquidated damages and not a penalty, and therefore the total stipulated percentage, and not merely the actual expenses, may be recovered. The principal case is in accord with the decisions of the following courts, in which it is held that a provision for the payment of attorney's fees if the note is placed in the hands of an attorney for collection is a contract of indemnity and not for liquidated damages, so that the maker is liable to the holder only for the amount of attorney's fees actually contracted for, or, in the absence of a special contract for fees, for the reasonable value of the services rendered. *Farmers' & Merchants' Nat. Bank* v. *Barton,* 21 Ill. App. 403; *Hassell* v. *Steinmann* (Tex. Civ. App.), 132 S.W.948; *Koppe* v. *Groginsky,* (Tex. Civ. App.) 132 S.W. 984; *Elmore* v *Rugely,* (Tex. Civ. App.), 107 S.W.151; *Starnes* v. *Schofield,* 5 Ind. App. 4, 31 N.E. 480. If the owner of the note in good faith agrees with an attorney to pay him the percentage stated in the stipulation for attorney's fees in a note, that amount is recoverable whether it is a reasonable fee or not. *Frantz* v. *Masterson* (Tex. Civ. App.), 133 S. W. 740. The amount of the attorney's fee stipulated for in a note should be allowed, unless it is unjust or unreasonable in view of the circumstances. *McCornick* v. *Swem,* 36 Utah 6, 102 Pac. 626; *Utah Nat. Bank of Salt Lake City* v. *Nelson,* 111 P. 907; *Smiley* v. *Meir,* 47 Ind. 559. A stipulation to pay 10 per cent. on the amount of the note as attorney's fees was enforced in the following cases. *Walker* v. *Tomlinson* (Tex. Civ. App.), 98 S. W. 906; *Stocking* v. *Moury,* 128 Ga. 414, 57 S. E. 704; *First Nat. Bank* v. *Campbell Co.* (Tex. Civ. App.), 114 S. W. 887; *Carver* v. *J. S. Mayfield Lumber Co.,* 29 Tex. Civ. App., 434, 68 S. W. 711.

CORPORATIONS—SALE BY CORPORATION TO SOLE STOCKHOLDER—NOTICE.—Plaintiff corporation, by a contract containing provisions as to payments, retention of title in vendor, etc., sold certain mill machinery to a milling company. Defendant, who was the sole acting officer of, and practically the sole stockholder in, the vendee corporation, conducted all negotiations of sale and signed the contract in its behalf. Shortly after the machinery was delivered he caused the real estate upon which the mill stood to be conveyed by the corporation to himself. Plaintiff company brought replevin for the machinery, and defendant alleged that it had become fixtures in the mill and part of his property. *Held,* that he was personally bound by the terms of the contract, in so far as they were effective between the parties, to preserve the character of the machinery as personal property. *Wolf Co.* v *Kutch* (Wis. 1911) 132 N. W. 981.

This holding is in line with that in cases cited and discussed on page 310, supra, and the same principles seem to be involved.

CRIMINAL LAW—ADJOURNMENT OF COURT TO HOUSE OF A SICK WITNESS:—Appellant, indicted for unlawful sale of intoxicants, applied for a continuance because of the absence of a material witness who was ill at his home in the

town where court was held. The court overruled the application and, against appellant's protest, adjourned the whole court to the home of the witness and tendered witness to counsel for appellant for examination. Said counsel declined to examine witness, claiming the courthouse was the place provided by law for the trial of cases. Conviction reversed. *Carter* v. *State* (Miss. 1911) 56 South. 454.

If the place of holding court is provided for by statute, court cannot lawfully be held elsewhere, unless the parties consent. *Bennett* v. *Cooper* 57 Barb. 642, held that there is wisdom in giving publicity to legal proceedings, and to allow court to be adjourned to the office of the judge would be to repeal the code. *Northrup* v. *People,* 37 N. Y. 203, held a conviction had at any other place than that provided by statute is void. In *Funk* v. *Carroll County,* 96 Ia. 158 the court held that, as a courthouse was provided by law as the place for holding court, there could be no adjournment to the house of a sick witness for the purpose of examination if done without the consent of the parties. Many cases hold that, even in the absence of statute, it can not be done; that because of the universal custom to hold court at the county seat at the courthouse, court must be held there. *Board of Commissioners of White County* v. *Gwin, Sheriff et al,* 136 Ind. 562. In *Williams* v. *Reutzel,* 60 Ark. 155 the reason given for confining the place to the county seat, is to attain "certainty and to prevent a failure of justice by reason of parties concerned or affected not knowing the place." In *Selleck* v. *Janesville,* 100 Wis. 157 it was held error to hold court at any place except the county seat, yet a removal, merely for the purpose of taking testimony, was held not a proceeding in open court but merely a proceeding in the action and, though an irregularity, would not work a reversal. Minnesota would probably hold that court could not be held anywhere except at the courthouse though still at the county seat. *Bell* v. *Jarvis,* 98 Minn. 109. In *Adams* v. *State* 19 Tex. App. 1, which arose on facts similar to those of the principal case and which the principal case cites and follows, it was held there could be no removal for the purpose of taking testimony against the objection of the defendant. The court said:—"if the defendant could be compelled to go one-half a mile * * * he could be required to go one, two, or five miles. We cannot sanction such a practice." There is a line of cases holding that court may be held at places other than the county seat or courthouse; *Hampton* v. *U. S.,* Morris (Ia.) 489 in which there was an adjournment to the house of a sick witness in the same town; *Mohon* v. *Harkreader,* 18 Kan. 383 holding that though the removal was irregular the trial was fair and no substantial rights of the complaining party affected; *Bates* v. *Sabin,* 64 Vt. 511 in which court was adjourned to the residence of a sick judge; *Litchfield Bank* v. *Church,* 29 Conn. 137, in which court was adjourned from the courthouse to a hotel in the same town, where one of the jurors was sick. Circumstances may be such as to justify a removal; *Boulden* v. *Ewart,* 63 Mo. 330, until a suitable building was erected at the county seat; *Herndon* v. *Hawkins,* 65 Mo. 265, if the houses at the county seat were destroyed by fire. Also *Williams* v. *Reutzel, supra.* If the removal is consented to or waived, no objection can be raised; *Adams* v. *State, supra; Bell* v. *Jarvis supra; Funk* v. *Carroll County, supra;*

Mohon v. *Harkreader, supra.* Some states hold that, though it is error to hold court at a place unauthorized by law, yet the proceedings had there are not void; *Lessee of Le Grange* v. *Ward et al.*, 11 Ohio 258; *State of Missouri* v. *Peyton,* 32 Mo. App. 522. What is the proper rule? It seems that in the absence of express provision by statute, if the court had jurisdiction of the subject matter and the person, and due notice was given to all parties concerned of the place of removal, and sufficient opportunity to be present without substantial inconvenience, the proceedings there had should be held valid. See *Reed* v. *State* 147 Ind. 41, 46 N. E. 135.

CRIMINAL LAW—ERROR IN ADMISSION OF EVIDENCE.—Plaintiff in error was tried for murder and found guilty on circumstantial evidence. The jury fixed his punishment at death. On his cross-examination it was proved that he had been convicted of a crime and had served in the penitentiary in Kentucky; also that he had once pleaded guilty to larceny in another county. *Held,* such evidence was inadmissible. *People* v. *Blevins* (Ill. 1911) 96 N. E. 214.

It is error to admit proof of other and distinct crimes when not offered to evidence motive, etc., and the court so held in this case. It was insisted, however, by counsel for the State that, though admission of the evidence was error, yet other evidence so clearly showed Blevins guilty that the conviction ought not to be reversed. In answer the court said: "True, error will not always reverse * * * where guilt is conclusively shown, *People* v. *Cleminson* 250 Ill. 135, 95 N. E. 157, but to this rule there are certain exceptions. In murder cases the jury fixes the punishment (either at death, imprisonment for life or term of years not less than fourteen). In this case (the principal case) the death penalty was fixed by the jury, and it may well be that * * * the admission in evidence * * of incompetent testimony calculated to prejudice and degrade plaintiff in error in the minds of the jury, influenced the jury in determining the punishment that should be inflicted. * * * (and) to say that we think he was not prejudiced, would be to establish a dangerous precedent." In support of its decision the court cites *Farris* v. *People,* 129 Ill., 521, 21 N. E. 821, in which defendant was indicted for murder and evidence that after the crime defendant committed rape on the wife of deceased was erroneously admitted. The proof of defendant's guilt was conclusive, yet the court in that case reversed the conviction because though the jury would have found defendant guilty they might not have imposed the death penalty. But it was thought the case of *Farris* v. *People, supra,* was overruled by the case of *People* v. *Cleminson* (Apr. 1911) 250 Ill. 135, 95 N. E. 157, 10 MICH. L. REV. 60, in which defendant was convicted of uxoricide and his punishment fixed at imprisonment for life. Evidence that defendant had committed abortions was erroneously admitted in that case, but the court refused to reverse because it seemed to them that under the evidence defendant was clearly guilty, apparently disregarding the argument in the *Farris* case, *supra,* to-wit: that the jury might have given him a less severe punishment. Had the court in the principal case followed the *Cleminson* case, *supra,* it could not have held as it did. Therefore it